



Leadership Conference on Civil Rights

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Support H.R. 1433:

“The District of Columbia House Voting Rights Act of 2007”

March 21, 2007

Dear Representative:

On behalf of the Leadership Conference on Civil Rights (LCCR), the nation's oldest, largest, and most diverse civil and human rights coalition, we urge you to vote to support H.R. 1433, the “District of Columbia House Voting Rights Act of 2007” (“DC VRA”), sponsored by Del. Eleanor Holmes Norton (D-DC) and Rep. Tom Davis (R-VA).

The DC VRA would provide D.C. residents with voting House representation, and it would give Utah a temporary, additional “at-large” House seat. Some have questioned whether Congress has the constitutional authority to provide D.C. with such representation. The text of the Constitution is ultimately silent on the question, but as the attached fact sheet explains, there are clear and compelling arguments for such authority.

Given the principles that inspired the American Revolution, it is inconceivable that the authors of the Constitution would deliberately impose “taxation without representation” on U.S. citizens all over again, or that they would aim to prohibit Congress from remedying a situation that so drastically contradicts the ideal of representative democracy. Furthermore, the Framers gave Congress extraordinary, plenary power over all matters relating to the District, and it is clear that D.C. can be – and frequently is – treated as a “state” with respect to the powers of Congress and the rights of the people. Treating D.C. as a “state” for the limited purpose of giving its citizens a voting House representative, then, is no stretch of either the language or the spirit of the Constitution.

Furthermore, the right to representation in our national legislature must come regardless of race or ethnicity. African Americans, who are a central focus of our civil rights agenda, have formed the majority of the D.C. population for many decades. D.C. achieved a congressional delegate and partial self government only after its citizens were aided by the civil rights movement, including many of our member organizations, who finally made the total absence of congressional representation and self-government in the nation's capital a matter of national importance. In light of the long history of federally enforced segregation in the nation's capital until recent decades, and its majority African American population, the continued disenfranchisement of D.C. residents – particularly in the House of Representatives – remains both inexplicable and intolerable.

“Equality In a Free, Plural, Democratic Society”

Hubert H. Humphrey Civil Rights Award Dinner • May 10, 2007



Please support fair and equal representation for both D.C. and Utah. Thank you very much for your consideration. If you have any questions, please feel free to contact Rob Randhava, LCCR Counsel, at 202-466-6058.

Sincerely,

A handwritten signature in black ink, appearing to read 'Wade Henderson', with a long horizontal line extending to the right.

Wade Henderson
President & CEO

A handwritten signature in black ink, appearing to read 'Nancy Zirkin', with a long horizontal line extending to the right.

Nancy Zirkin
Vice President / Director of Public Policy

encl.



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Support H.R. 1433, “The District of Columbia House Voting Rights Act of 2006”

What H.R. 1433 Does

H.R. 1433 would permanently increase the membership of the U.S. House of Representatives from the current 435 to 437. One of these additional members would represent the nearly 600,000 residents of the District of Columbia, who currently do not have any voting Congressional representation. The other member would represent the state of Utah, in an at-large capacity, until the next Congressional reapportionment after the 2010 census.

After the 2010 census, all 437 House seats would be reapportioned among the fifty states and D.C. based on population, with D.C. remaining eligible for no more than one seat.

Why H.R. 1433 – And The Right to Vote – Is So Important

The right to vote for those who make and enforce laws – the antidote to the evil of “taxation without representation” – is the most important right that citizens have in any democracy. As the Supreme Court noted in the landmark voting rights case of *Wesberry v. Sanders* (1964):

No right is more precious in a free country than that of having a voice in the election of those who make the laws under which we, as good citizens, must live. Other rights, even the most basic, are illusory if the right to vote is undermined. Our Constitution leaves no room for classification of people in a way that unnecessarily abridges this right.

Since 1801, D.C. residents have been deprived of this right. U.S. citizens living in D.C. must pay federal income taxes, register for selective service, and serve on federal juries. Yet they have no voice in the laws that govern these matters, or over any other federal legislation.

Since 2001, Utah residents have also had their right to vote undermined. Because thousands of Utah citizens living abroad were not counted in the 2000 census, Utah was given only three Congressional districts instead of the four that it deserved. As a result, the votes of all U.S. citizens from Utah have been diluted.

Why H.R. 1433 Is Constitutional

Because D.C. is not a state, some have questioned whether Congress has the authority to provide D.C. residents with Congressional representation. But nothing in the language of the Constitution prohibits Congress from enacting such a law – and as legal scholars point out, there is ample reason to believe that H.R. 1433 would have been perfectly acceptable to the Framers:

Why the District was Created: The Constitution created a separate district in order to keep any state from unfairly influencing the federal government. But there is no evidence that the Framers thought it was necessary to keep residents in this district from *being represented in the federal government*, only to keep them from *forming a separate one*. In fact, given the principles on which the recent American Revolution had been based, it is inconceivable that the Framers meant to impose “taxation without representation” on citizens all over again.

Congress' Broad Authority Over D.C.: To fully protect the interests of the federal government, the Framers gave Congress extremely broad authority over all matters relating to the new federal district under Article I, § 8, clause 17 (the “District Clause”). Courts have ruled that this clause gives Congress “extraordinary and plenary power” over D.C., with “full and unlimited jurisdiction . . . by any and every act of legislation which it may deem conducive to that end,” subject only to the express prohibitions in the Constitution. Any legislation affecting D.C. – including H.R. 1433 – must be understood in this context.

Congress has let Citizens Vote for Congress Even When They Aren't State Residents: While the language of the Constitution *literally* requires that House members be elected “by the People of the Several states,” Congress has not always applied this language so literally:

- After Virginia and Maryland gave up lands in 1790 that later became the District of Columbia, Congress let residents keep voting in federal elections in those original states through 1800 – even though, legally, they were no longer residents.
- The Uniformed and Overseas Citizens Absentee Voting Act allows U.S. citizens living abroad to vote in Congressional elections in their last state of residence – *even if* they no longer are citizens there, pay any taxes there, or have any intent to return.

Congress has Treated D.C. as a “State” in Other Contexts: While many provisions in the Constitution refer only to “states,” Congress has validly treated D.C. as if it were a state in a number of cases, and could likely do the same for purposes of representation. For example:

- Article III provides that courts may hear cases “between citizens of different states” (diversity jurisdiction). The Supreme Court initially ruled that under this language, D.C. residents could not sue residents of other states. But in 1940, Congress began treating D.C. as a state for this purpose – a law upheld in *D.C. v. Tidewater Transfer Co.* (1949).
- The Constitution allows Congress to regulate commerce “among the several states,” which, literally, would exclude D.C. But Congress’ authority to treat D.C. as a “state” for Commerce Clause purposes was upheld in *Stoughtenburg v. Hennick* (1889).
- Similarly, a U.S. Court of Appeals recently treated D.C. as a “state” for purposes of the Second Amendment, in *Parker v. District of Columbia* (D.C. Cir. 2007).

The 23rd Amendment Doesn't Suggest Otherwise: The fact that it took a constitutional amendment to give D.C. residents a role in Presidential elections does not mean that one is required to provide Congressional representation. The 23rd Amendment affected Article II of the Constitution, an article in which Congress’ authority is greatly limited – unlike its broad powers, including the “District Clause,” under Article I.

Why H.R. 1433 Has Bipartisan Support

H.R. 1433 was cleared by the Oversight and Government Reform Committee on March 13 by a 24-5 vote. Majorities in both parties recognized that while H.R. 1433 is a major advance in voting rights, its political impact is neutral. Each party would likely gain one additional House seat, canceling out any partisan advantage. And because the increase in House seats is permanent, no state would lose a seat by giving one to D.C.

The bill’s impact on the 2008 presidential election would also be neutral. It would not affect the three Electoral College votes that D.C. already has. While Utah would gain one more Electoral College vote in the 2008 election, a candidate would still need 270 votes to win the Presidency.